

Introduced by Senators Denham and Brulte

February 20, 2004

An act to amend Section 2085.5 of the Penal Code, relating to restitution, making an appropriation therefor and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1649, as introduced, Denham. Restitution: juvenile offenders.

Under existing law, when a minor is adjudged a ward of the court, the court is required to order the minor to pay, in addition to any other penalty provided or imposed under the law, a restitution fine and restitution to the victim or victims, if any. Under existing law, in any case in which a prisoner owes a restitution fine or order, the Director of Corrections is required to deduct specified percentages from the wages and trust account deposits of a prisoner, unless prohibited.

This bill would require the director to collect restitution ordered on former wards of the California Youth Authority. The bill would make payment of these restitution fines a condition of parole. The bill would require the director to collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law, and to transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The bill would provide that if the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. Because the Restitution Fund is a continuously appropriated fund, this

bill would make an appropriation. This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2085.5 of the Penal Code is amended to
2 read:

3 2085.5. (a) In any case in which a prisoner owes a restitution
4 fine imposed pursuant to subdivision (a) of Section 13967 of the
5 Government Code, as operative prior to September 28, 1994,
6 *Section 730.6 of the Welfare and Institutions Code*, or subdivision
7 (b) of Section 1202.4, the Director of Corrections shall deduct a
8 minimum of 20 percent or the balance owing on the fine amount,
9 whichever is less, up to a maximum of 50 percent from the wages
10 and trust account deposits of a prisoner, unless prohibited by
11 federal law, and shall transfer that amount to the California Victim
12 Compensation and Government Claims Board for deposit in the
13 Restitution Fund in the State Treasury. Any amount so deducted
14 shall be credited against the amount owing on the fine. The
15 sentencing court shall be provided a record of the payments.

16 (b) In any case in which a prisoner owes a restitution order
17 imposed pursuant to subdivision (c) of Section 13967 of the
18 Government Code, as operative prior to September 28, 1994,
19 *Section 730.6 of the Welfare and Institutions Code*, or subdivision
20 (f) of Section 1202.4, the Director of Corrections shall deduct a
21 minimum of 20 percent or the balance owing on the order amount,
22 whichever is less, up to a maximum of 50 percent from the wages
23 and trust account deposits of a prisoner, unless prohibited by
24 federal law. If the restitution is owed to a person who has filed an
25 application with the Victims of Crime Program, the director shall
26 transfer that amount to the California Victim Compensation and
27 Government Claims Board for direct payment to the victim, or
28 payment shall be made to the Restitution Fund to the extent that
29 the victim has received assistance pursuant to that program. No
30 deductions shall be made on behalf of victims who have not filed
31 an application with the Victims of Crime Program. The sentencing
32 court shall be provided a record of the payments made to victims



1 and of the payments deposited to the Restitution Fund pursuant to
2 this subdivision.

3 (c) The director shall deduct and retain from the wages and trust
4 account deposits of a prisoner, unless prohibited by federal law, an
5 administrative fee that totals 10 percent of any amount transferred
6 to the California Victim Compensation and Government Claims
7 Board pursuant to subdivision (a) or (b). The director shall deduct
8 and retain from any prisoner settlement or trial award, an
9 administrative fee that totals 5 percent of any amount paid from the
10 settlement or award to satisfy an outstanding restitution order or
11 fine pursuant to subdivision (j), unless prohibited by federal law.
12 The director shall deposit the administrative fee moneys in a
13 special deposit account for reimbursing administrative and
14 support costs of the restitution program of the Department of
15 Corrections. The director, at his or her discretion, may retain any
16 excess funds in the special deposit account for future
17 reimbursement of the department's administrative and support
18 costs for the restitution program or may transfer all or part of the
19 excess funds for deposit in the Restitution Fund.

20 (d) (1) In any case in which a parolee owes a restitution fine
21 imposed pursuant to subdivision (a) of Section 13967 of the
22 Government Code, as operative prior to September 28, 1994, or
23 subdivision (b) of Section 1202.4, the Director of Corrections may
24 collect from the parolee any moneys owing on the restitution fine
25 amount, unless prohibited by federal law, and shall transfer that
26 amount to the California Victim Compensation and Government
27 Claims Board for deposit in the Restitution Fund in the State
28 Treasury. Any amount so deducted shall be credited against the
29 amount owing on the fine. The sentencing court shall be provided
30 a record of the payments.

31 (2) *In any case in which a parolee owes a restitution fine*
32 *imposed pursuant to Section 730.6 of the Welfare and Institutions*
33 *Code, the payment of the restitution fine shall be a condition of*
34 *parole. The director shall collect from the parolee any moneys*
35 *owing on the restitution fine amount, unless prohibited by federal*
36 *law, and shall transfer that amount to the California Victim*
37 *Compensation and Government Claims Board for deposit in the*
38 *Restitution Fund in the State Treasury. Any amount deducted*
39 *under this paragraph shall be credited against the amount owing*

1 *on the fine. The sentencing court shall be provided a record of the*
2 *payments.*

3 (e) (1) In any case in which a parolee owes a direct order of
4 restitution, imposed pursuant to subdivision (c) of Section 13967
5 of the Government Code, as operative prior to September 28,
6 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the
7 Director of Corrections may collect from the parolee any moneys
8 owing, unless prohibited by federal law. If the restitution is owed
9 to a person who has filed an application with the Victims of Crime
10 Program, the director shall transfer that amount to the California
11 Victim Compensation and Government Claims Board for direct
12 payment to the victim, or payment shall be made to the Restitution
13 Fund to the extent that the victim has received assistance pursuant
14 to that program. No deductions shall be made on behalf of victims
15 who have not filed an application with the Victims of Crime
16 Program. The sentencing court shall be provided a record of the
17 payments made by the offender pursuant to this subdivision.

18 (2) *In any case in which a parolee owes a direct order of*
19 *restitution imposed pursuant to Section 730.6 of the Welfare and*
20 *Institutions Code, the payment of the restitution fine shall be a*
21 *condition of parole. The director shall collect from the parolee any*
22 *moneys owing on the restitution fine amount, unless prohibited by*
23 *federal law. If the restitution is owed to a person who has filed an*
24 *application with the Victims of Crime Program, the director shall*
25 *transfer that amount to the California Victim Compensation and*
26 *Government Claims Board for direct payment to the victim, or*
27 *payment shall be made to the Restitution Fund to the extent that*
28 *the victim has received assistance pursuant to that program. No*
29 *deductions shall be made on behalf of victims who have not filed*
30 *an application with the Victims of Crime Program. The sentencing*
31 *court shall be provided a record of the payments be made by the*
32 *offender pursuant to this subdivision.*

33 (f) The director may deduct and retain from any moneys
34 collected from parolees an administrative fee that totals 10 percent
35 of any amount transferred to the California Victim Compensation
36 and Government Claims Board pursuant to subdivision (d) or (e),
37 unless prohibited by federal law. The director shall deduct and
38 retain from any settlement or trial award of a parolee an
39 administrative fee that totals 5 percent of any amount paid from the
40 settlement or award to satisfy an outstanding restitution order or



1 fine pursuant to subdivision (j), unless prohibited by federal law.
2 The director shall deposit the administrative fee moneys in a
3 special deposit account for reimbursing administrative and
4 support costs of the restitution program of the Department of
5 Corrections. The director, at his or her discretion, may retain any
6 excess funds in the special deposit account for future
7 reimbursement of the department's administrative and support
8 costs for the restitution program or may transfer all or part of the
9 excess funds for deposit in the Restitution Fund.

10 (g) When a prisoner has both a restitution fine and a restitution
11 order from the sentencing court, the Department of Corrections
12 shall collect the restitution order first pursuant to subdivision (b).

13 (h) When a parolee has both a restitution fine and order from
14 the sentencing court, the Department of Corrections may collect
15 the restitution order first, pursuant to subdivision (e).

16 (i) If an inmate is housed at an institution that requires food to
17 be purchased from the institution canteen for unsupervised
18 overnight visits, and if the money for the purchase of this food is
19 received from funds other than the inmate's wages, that money
20 shall be exempt from restitution deductions. This exemption shall
21 apply to the actual amount spent on food for the visit up to a
22 maximum of fifty dollars (\$50) for visits that include the inmate
23 and one visitor, seventy dollars (\$70) for visits that include the
24 inmate and two or three visitors, and eighty dollars (\$80) for visits
25 that include the inmate and four or more visitors.

26 (j) Any compensatory or punitive damages awarded by trial or
27 settlement to any inmate or parolee in connection with a civil
28 action brought against any federal, state, or local jail, prison, or
29 correctional facility, or any official or agent thereof, shall be paid
30 directly, after payment of reasonable attorney's fees and litigation
31 costs approved by the court, to satisfy any outstanding restitution
32 orders or restitution fines against that person. The balance of any
33 award shall be forwarded to the payee after full payment of all
34 outstanding restitution orders and restitution fines, subject to
35 subdivisions (c) and (f). The Department of Corrections shall
36 make all reasonable efforts to notify the victims of the crime for
37 which that person was convicted concerning the pending payment
38 of any compensatory or punitive damages.

39 (k) (1) Amounts transferred to the California Victim
40 Compensation and Government Claims Board for payment of

1 direct orders of restitution shall be paid to the victim within 60
2 days from the date the restitution revenues are received by the
3 California Victim Compensation and Government Claims Board.
4 If the restitution payment to a victim is less than fifty dollars (\$50),
5 then payment need not be forwarded to that victim until the
6 payment reaches fifty dollars (\$50) or until 180 days from the date
7 the first payment is received, whichever occurs sooner.

8 (2) In any case in which a victim cannot be located, the
9 restitution revenues received by the California Victim
10 Compensation and Government Claims Board on behalf of the
11 victim shall be held in trust in the Restitution Fund until the end
12 of the state fiscal year subsequent to the state fiscal year in which
13 the funds were deposited or until the time that the victim has
14 provided current address information, whichever occurs sooner.
15 Amounts remaining in trust at the end of the specified period of
16 time shall revert to the Restitution Fund.

17 (3) Any victim failing to provide a current address within the
18 period of time specified in paragraph (2) may provide
19 documentation to the Department of Corrections, which in turn
20 shall verify that moneys were in fact collected on behalf of the
21 victim. Upon receipt of that verified information from the
22 Department of Corrections, the California Victim Compensation
23 and Government Claims Board shall transmit the restitution
24 revenues to the victim in accordance with the provisions of
25 subdivision (b).

26 SEC. 2. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety
28 within the meaning of Article IV of the Constitution and shall go
29 into immediate effect. The facts constituting the necessity are:

30 In order for victims of crimes to be compensated by outstanding
31 juvenile restitution orders, it is necessary for this act to take effect
32 immediately.